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Attorneys for Defendant ePartners Incorporated

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|------------------------|---|--------------------------|
| ----- | | X |
| GMA ACCESSORIES, INC., | : | ECF CASE |
| | : | |
| | : | No. 07 CV 8414 (LAK) |
| Plaintiff, | : | |
| | : | MOTION FOR LEAVE TO FILE |
| - against - | : | AMENDED ANSWER AND |
| | : | ORIGINAL COUNTERCLAIM |
| EPARTNERS, INC. | : | |
| Defendant. | : | |
| | : | |
| ----- | | X |

**DEFENDANT ePARTNERS INCORPORATED'S MOTION FOR LEAVE
TO FILE AMENDED ANSWER AND ORIGINAL COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant ePartners Incorporated ("ePartners") and pursuant to Federal Rules of Civil Procedure 13(f) and 15(a) files this, Defendant ePartners' Motion for Leave To File Amended Answer and Original Counterclaim against Plaintiff, and in support thereof would respectfully show the Court as follows:

I.
ARGUMENTS & AUTHORITIES

1. Federal Rule of Civil Procedure 13(a) requires a pleading to assert as a counterclaim any claim that—at the time of service—the party may have if the claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require adding another party over whom the Court cannot acquire jurisdiction.

2. Federal Rule of Civil Procedure 13(f) allows a party to amend a pleading to add a counterclaim that was omitted through oversight, inadvertence or excusable neglect or if justice so requires.

3. Further, Federal Rule of Civil Procedure 15(a) provides a party may amend its pleading once as a matter of course before being served with a responsive pleading or within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar. In any other case, a party may amend its pleading either with the consent of the opposing party or upon leave of Court. "The Court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

4. ePartners requests leave to amend its Answer in this matter to assert counterclaims of breach of contract, breach of fiduciary duty and misappropriation of intellectual property against Plaintiff.

5. The request to amend is timely in that Plaintiff's (untimely) production of documents in early April 2008 and production of the first GMA employee deponents the week of May 19, 2008 form the basis of these counterclaims in whole, with regard to claims of breach of the parties' Joint Marketing Agreement, breach of fiduciary duty and misappropriation of intellectual party causes of action and, in large part, with regard to the remaining cause of action.

6. The request to amend does not prejudice GMA for the same reason: the information on which the counterclaims are based has been, to a great extent, in the sole possession of GMA. In all other cases, GMA has had equal access to the information on which the counterclaims are based.


7. ePartners requests leave to amend not for delay, but so that justice may be done. ePartners Amended Answer and Original Counterclaim is filed along with this motion as Exhibit 1 and is incorporated herein by reference for all purposes.

WHEREFORE, PREMISES CONSIDERED, ePartners Incorporated requests that this Court grant its Motion for Leave to File Amended Answer and Original Counterclaim and for such other and further relief to which it may be justly entitled.

Dated: Dallas, Texas
June 3, 2008

Respectfully submitted,

HERMES SARGENT BATES, LLP

By:  *w/permission
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